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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2013–N282]

[FF08E00000–FXES11120800000–145]

Draft Environmental Impact Statement and Proposed Maricopa Sun Solar Complex Multi-Species Habitat Conservation Plan, Kern County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have prepared a draft environmental impact statement (EIS) under the National Environmental Policy Act of 1969, as amended (NEPA), in response to an application from Maricopa Sun, LLC (the applicant), for an incidental take permit (ITP) pursuant to the Endangered Species Act of 1973, as amended (Act). The applicant has prepared the draft Maricopa Sun Solar Complex Habitat Conservation Plan (HCP) for review. We announce a public comment

period on the permit application, including the draft EIS and the proposed HCP. We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party.

DATES: To ensure consideration, please send your written comments by **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Please address written comments to Mike Thomas, Chief, Conservation Planning Division, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W-2605, Sacramento, CA 95825. Alternatively, you may send comments by facsimile to (916) 414-6713.

FOR FURTHER INFORMATION CONTACT: Mike Thomas, Chief, Conservation Planning Division, or Eric Tattersall, Deputy Assistant Field Supervisor, at the address shown above or at (916) 414-6600 (telephone). If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

This notice advises the public that we have prepared a draft environmental impact statement (EIS) under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*; NEPA), in response to an application from Maricopa Sun, LLC (the

applicant), for an incidental take permit (ITP) pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*; Act). The application addresses the proposed incidental take (take) of five animal species proposed as “covered species” within a 5,784-acre permit area during a proposed permit term of 35 years. The applicant has prepared the draft Maricopa Sun Solar Complex Habitat Conservation Plan (HCP) to describe and implement a conservation plan that will minimize and mitigate environmental effects associated with the construction, operation, maintenance, and decommissioning of an up to 700-megawatt photovoltaic power generating facility and implementation of conservation actions associated with the Habitat Conservation Plan in Kern County, California. We also announce a 90-day public comment period on the permit application, including the draft EIS and the proposed HCP. We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party.

Availability of Documents

You may obtain copies of the draft EIS and the draft HCP from the individuals in **FOR FURTHER INFORMATION CONTACT**, or from the Sacramento Fish and Wildlife Office website at <http://www.fws.gov/sacramento>. Copies of these documents are also available for public inspection, by appointment, during regular business hours, at the Sacramento Fish and Wildlife Office (see **ADDRESSES**).

Background Information

Section 9 of the Act (16 U.S.C. 1531 *et seq.*) and Federal regulations (50 CFR 17) prohibit the taking of fish and wildlife species listed as endangered or threatened under section 4 of the Act. “Take” of federally listed fish or wildlife is defined under the Act as to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in such conduct” (16 U.S.C. § 1532(19)). The term “harass” is defined in the regulations as to commit “an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering” (50 CFR 17.3). The term “harm” is defined in the regulations as “an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering” (50 CFR 17.3). However, under specified circumstances, the Service may issue permits that allow the take of federally listed wildlife species, provided that the take that occurs is incidental to, but not the purpose of, an otherwise lawful activity.

Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32, respectively. Section 10(a)(1)(B) of the Act contains provisions for issuing such incidental take permits to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

- (1) The taking will be incidental;
- (2) The applicants will, to the maximum extent practicable, minimize and mitigate the impact of such taking;

- (3) The applicants will develop a proposed HCP and ensure that adequate funding for the HCP will be provided;
- (4) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
- (5) The applicants will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the HCP.

Applicant's Proposed Habitat Conservation Plan

The draft HCP addresses, and the applicant seeks incidental take authorization for, five animal species (three federally endangered and two federally nonlisted). The proposed permit would provide take authorization for all species identified in the draft HCP as covered species. Take authorized for federally listed covered species would be effective upon permit issuance. Take authorization for currently nonlisted covered species would become effective concurrent with listing, should the species be listed under the Act during the proposed 35-year permit term.

The following three federally listed endangered species are proposed to be included as covered species in the proposed HCP: Blunt-nosed leopard lizard (*Gambelia sila*), Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*), and the San Joaquin kit fox (*Vulpes macrotis mutica*).

The following two federally nonlisted species are proposed to be included as covered species in the proposed HCP: Western Burrowing owl (*Athene cunicularia*) and the Nelson's antelope squirrel (*Ammospermophilus nelsoni*).

Activities proposed for coverage under the proposed ITP ("covered activities") would be otherwise lawful activities that occur in compliance with the HCP, including, but not limited to, the following general categories:

- (1) Construction and operation activities within solar sites;
- (2) Management and maintenance activities within movement corridors;
- (3) Management activities within the areas designated for conservation (conservation sites), including monitoring and reporting actions;
- (4) Activities associated with implementation of the conservation program specified in the draft HCP;
- (5) Decommissioning; and
- (6) Implementation of the conservation program.

Construction-related activities could include grading and compaction; trenching; paving of access roads; and installation of solar arrays, meteorological stations, transmission lines, septic leech fields, fencing, and landscaping. Construction of solar facilities on all sites is anticipated to be completed over an 8-to 10-year period from the commencement of the initial development; however, it could extend to a 10-to 15 year-period. Construction of the project will occur in a series of approximately 1-megawatt blocks, generally consisting of 5 to 8.64 acres each. It is anticipated that construction of

each section (640 acres) within the Maricopa Sun Solar Complex will take 12 to 18 months. Operation-related activities could include solar panel maintenance, on-site parking, operation of solar modules, inspection and repair of equipment, and operation of lighting. Typical activities associated with decommissioning of the solar energy facility include removal of all solar electric systems, buildings, cabling, and electrical components; breaking up of concrete pads and foundations; removal of access roads; additional grading; and replacement of soil disturbed from decommissioning. Preservation/enhancement and conservation plan management activities could include vegetation control (i.e., grazing and mowing), fence installation, special status species monitoring (i.e., surveys such as trapping, use of remote cameras, and spotlighting), and habitat restoration and creation.

The proposed covered activities related to development and operations and maintenance of the solar sites would result in the permanent or temporary disturbance of up to 3,798 acres of existing land cover within the proposed 5,784-acre permit area. The proposed covered activities related to management of the conservation sites would also result in some disturbance of land cover, but overall these actions are expected to benefit the covered species. The solar site parcels encompass 3,798 acres, 91 acres of existing public easements, and the conservation sites total 1,894 acres. The covered lands are primarily comprised of currently undeveloped and vacant agricultural land, and are relatively flat. Surrounding land uses are both active and inactive agricultural land; they also include lands designated as flood hazard areas, public facilities, lands designated for the protection of important watershed recharge areas or wildlife habitat, lands having

important value as a buffer between resource areas and urban areas, and lands designated for industrial uses. Covered activity impacts to existing land cover types were used as a surrogate to identify maximum potential impacts to species and the potential take of each covered species. The proposed HCP conservation strategy prescribes conditions for implementing each covered activity that avoid or minimize potential take of the covered species, and identifies mitigation for species impacts that cannot be avoided.

National Environmental Policy Act Compliance

Our proposed permit issuance decision triggers compliance with NEPA, which requires that environmental information be available to public officials and citizens before Federal decisions are made and before Federal actions are taken. We formally initiated an environmental review of the draft EIS through publication of a notice of intent (NOI) to prepare a draft EIS in the Federal Register on Friday, December 23, 2011 (76 FR 80385). That notice also announced a public scoping period, through February 21, 2012, during which we invited interested parties to provide written comments expressing their issues or concerns related to the proposal. A public scoping meeting was held in Bakersfield, California, on January 23, 2012. We prepared the draft EIS to inform the public of the proposed HCP; our proposed permit action; alternatives to that action; the environmental impacts of the alternatives, including the proposed action; any adverse environmental effects that cannot be avoided; and any irreversible commitments of resources; as well as to address comments received during early public scoping efforts.

Alternatives in the Draft Environmental Impact Statement

The Service is providing notice of the availability of our draft EIS, which evaluates the impacts of the Proposed Action Alternative, a No Action Alternative, and a Reduced Permit Area Alternative.

No Action Alternative: Under the No Action Alternative, we would not issue an incidental take permit to the applicant; the applicant would not implement an HCP, and would avoid the take of the proposed covered species. The No Action Alternative would not address the applicant's underlying needs, would not contribute to meeting the State of California's renewable energy goals, and would not assist with the offset of carbon emissions. The 5,784 acres identified as the permit area would likely remain agricultural, and the 1,894 acres identified as conservation sites would not be permanently conserved. As a result, there would be no conservation benefit to covered species as a result of the Proposed Action. Agricultural activities, such as disking and grazing, would likely continue, resulting in reduced habitat quality as a result of vegetation removal and soil compaction.

Proposed Action Alternative: Under the Proposed Action Alternative, we would issue an incidental take permit for the applicant's proposed HCP, which includes the covered activities and the conservation measures described above in Background Information, and described with more detail in the applicant's proposed Maricopa Sun Solar Complex Multi-Species Habitat Conservation Plan.

Reduced Permit Area Alternative: Under the Reduced Permit Area Alternative, the permit area would be reduced from 5,784 acres to 3,682 acres by removing the following sites from the project: Sites 4-S/4-M (652.5 acres), 6-S (320.9 acres), 7-S/7-M (481.2 acres) and 17-C (647.7 acres). The lands excluded from the permit area would likely remain vacant and would continue to be disked on a regular basis for weed control. If water became available, these lands could be converted to other uses. Under this alternative, there would be fewer impacts to the covered species than under the Proposed Action, because construction, operations, maintenance, and decommissioning activities would occur over a smaller area. However, commensurate with the level of impacts, it is likely less land would be permanently conserved and managed, which would likely result in fewer benefits to the covered species.

Public Comments

We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on this notice. We particularly seek comments on the following:

- (1) Biological information concerning the species;
- (2) Relevant data concerning the species;
- (3) Additional information concerning the range, distribution, population size, and population trends of the species;
- (4) Current or planned activities in the subject area and their possible impacts on the species; and

- (5) The presence of archeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns, all of which are required to be considered in project planning by the National Historic Preservation Act (16 U.S.C. 470 *et seq.*); and
- (6) Identification of any other environmental issues that should be considered with regard to the proposed transmission line and permit action.

You may submit your comments and materials by one of the methods listed above in ADDRESSES. Comments and materials we receive, as well as supporting documentation we used in preparing the EIS, will be available for public inspection by appointment, during normal business hours, at our office (see FOR FURTHER INFORMATION CONTACT).

Public Availability of Comments

Before including your address, phone number, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—might be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Next Steps

We will evaluate the application, associated documents, and comments submitted to prepare a Final EIS. A permit decision will be made no sooner than 30 days after the

publication of a Final EIS notice in the Federal Register and completion of the Record of Decision.

Authorities

We publish this notice under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321–4347 *et seq.*; NEPA), and its implementing regulations in the Code of Federal Regulations (CFR) at 40 CFR 1500–1508, as well as in compliance with section 10(c) of the Endangered Species Act (16 U.S.C. 1531–1544 *et seq.*; Act).

Alexandra Pitts
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Sacramento, California.

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